

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	HABETHA, et al.
Serial No.	:	10/595,799
Confirmation No.	:	6942
Filing Date	:	February 26, 2007
Group Art Unit	:	2617
Examiner	:	BEHNAMIAN, SHAHRIAR
Attorney Docket No.	:	DE030391

**APPEAL BRIEF
On Appeal from Group Art Unit 2617**

Mail Stop: Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed on April 30, 2010
and in response to the final Office Action of February 2, 2010.

TABLE OF CONTENTS

I.	REAL PARTY IN INTERST	3
II.	RELATED APPEALS AND INTERFERENCES.....	3
III.	STATUS OF CLAIMS.....	3
IV.	STATUS OF AMENDMENTS.....	3
V.	SUMMARY OF CLAIMED SUBJECT MATTER.....	4
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	5
VII.	ARGUMENT.....	6
VIII.	CLAIMS APPENDIX.....	13
IX.	EVIDENCE APPENDIX.....	16
X.	RELATED PROCEEDINGS APPENDIX.....	17

I. REAL PARTY IN INTEREST

The real party in interest of the above-identified application is Koninklijke Philips Electronics N.V., the assignee of record, whose assignment is recorded in the USPTO as of February 26, 2007 on four (4) pages beginning at Reel 018930, Frame 0095.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any pending appeals, judicial proceedings, or interferences which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

- a) Claims 1-12 are pending at the time of filing this Appeal Brief, stand rejected in a final Office Action dated December 8, 2009, and are the subject of this appeal.
- b) Claims 1 and 9 are independent.

IV. STATUS OF AMENDMENTS

The claims listed in section "VIII. Claims Appendix" of this Appeal Brief correspond to the claims as submitted in Appellant's response filed on November 20, 2009 (in response to the Office Action dated August 20, 2009). No claim amendments have been submitted following the response of November 20, 2009, nor are any amendments pending.

V. SUMMARY OF CLAIMED SUBJECT MATTER¹

The claimed invention, as recited in claim 1, is directed to a method for direct communication between a first station and a second station in an Access Point controlled wireless network (see Appellant's specification at least at page 3, lines 31-page 4, line 8), wherein a communication channel is ruled by an identifier associated with the Access Point (page 2, lines 2-4), comprising: generating a second identifier by said first station (page 3, lines 1-2 and page 4, lines 11-14), the second identifier different from the identifier associated with the Access Point (page 4, lines 13-16); sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier (page 4, lines 4-8); sending, by said second station, a response message acknowledging the invitation message (page 4, lines 9-12); and setting up direct communication between said first station and said second station using said second identifier (page 4, lines 9-12), wherein the first station and the second station are different from the Access Point (page 4, lines 7-8).

The claimed invention, as recited in claim 9, is directed to an access point controlled wireless network (see Appellant's specification at least at page 3, lines 31-page 4, line 8), wherein a first communication channel is ruled by an identifier associated with the access point (page 2, lines 2-4), said wireless network comprising: at least a first station and a second station

¹ It should be explicitly noted that it is not Appellant's intention that the currently claimed or described embodiments be limited to operation within the illustrative embodiments described below beyond what is required by the claim language. Further description of the illustrative embodiments are provided indicating portions of the claims which cover the illustrative embodiments merely for compliance with requirements of this appeal without intending to read any further interpreted limitations into the claims as presented.

capable of establishing direct communication (page 5, lines 4-6), wherein: said first station generates a second identifier (page 3, lines 1-2 and page 4, lines 11-14), the second identifier different from the identifier associated with the access point (page 4, lines 13-16), and sends an invitation message for direct communication carrying said second identifier to the second station (page 4, lines 4-8); said second station sends a response message acknowledging the invitation message; and said first station sets up direct communication with said second station using said second identifier (page 4, lines 9-12), wherein the first station and the second station are different from the access point (page 4, lines 7-8).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1-7 and 9-12 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over US Patent Number 5,949,776 to Mahany et al. (“Mahany”) in view of US Publication Number 2004/0097199 to Kawamura et al. (“Kawamura”).
- B. Whether claim 8 is properly rejected under 35 U.S.C. §103(a) as being unpatentable over Mahany in view of Kawamura and further in view of US Patent Number 6,483,852 to Jacquet et al. (“Jacquet”).

The Office Action also objects to claim 5. Appellant will address this objection once the issues in this appeal brief have been resolved.

VII. ARGUMENT

Appellant respectfully traverses the rejections in accordance with the detailed arguments set forth below.

A. Claims 1-7 and 9-12 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Mahany in view of Kawamura.

1. Claim 1

Claim 1 is an independent claim that serves as a base claim for dependent claims 2-8 and 12. Claim 1 requires:

A method for direct communication between a first station and a second station in an Access Point controlled wireless network, wherein a communication channel is ruled by an identifier associated with the Access Point, comprising:

***generating** a second identifier by said first station, the second identifier **different** from the identifier associated with the Access Point;*

sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier;

sending, by said second station, a response message acknowledging the invitation message; and

setting up direct communication between said first station and said second station using said second identifier, wherein the first station and the second station are different from the Access Point. [Emphasis added].

On pages 4 and 5 of the final Office Action, the Examiner admits that Mahany fails to disclose or suggest the feature of generating a second identifier by said first station, the second identifier different from the identifier associated with the Access Point. The Examiner relies on Kawamura as allegedly disclosing or suggesting these features of Appellant's claim 1. Appellant respectfully traverses this rejection on two separate points.

First, Kawamura relates to a method and an apparatus for data communication between devices. The final Office Action points to Kawamura at figs. 2-9 and paragraphs [0070]-[0078] as allegedly disclosing or suggesting the above-emphasized features of Appellant's claim 1. However, Kawamura is different from Appellant's claim 1 because the configurations of Kawamura's communications devices, as shown in figs. 2-9, do not include an access point. For example, Kawamura at figs. 3, 8, and 9 and the associated descriptions in the specification shows different configurations of communications devices, but none of the figures discloses or suggests that a device is an Access Point.

Because Kawamura does not disclose or suggest an Access Point, Kawamura cannot suggest the feature of "the second identifier *different* from the identifier associated with the Access Point" (emphasis added) as set forth in Appellant's claim 1. Therefore, the combination of Mahaney and Kawamura fails to disclose or suggest every element in Appellant's claim 1 and as such the rejection to claim 1 under 35 U.S.C. 103 should be reversed.

Second, the final Office Action alleges that Mahaney at figs. 1a-c and col. 5, lines 54-63, col. 9, lines 33-58, and col. 16, lines 14-32 discloses or suggests the feature of "generating a second identifier by said first station," as required in Appellant's claim 1. Appellant respectfully traverses this argument.

The cited portions of Mahaney do not "generate a second identifier by said first station," as required in claim 1. Instead, Mahaney allegedly includes an existing device address or identifiers within a data packet. For example, Mahaney at col. 16, lines 13-14 includes the address in a SYNC header. However, the address of Mahaney is not generated by a station. In contrast to Appellant's claim 1, the address of Mahaney appears to be pre-existing addresses or

unique identifiers. (See Mahaney, col. 35, lines 23-24, “All devices are required to have unique 48 bit global addresses.”). However, nowhere does Mahaney disclose or suggest generating the addresses by a station.

Kawamura does not cure this defect of Mahaney with respect to claim 1 because Kawamura does not generate a second identifier by said first station, as required in Appellant’s claim 1. For example, Kawamura at paragraph 6 describes generating a data packet which allegedly includes the address of the destination device. Although Kawamura may disclose generating a data packet which includes an address, Kawamura does not disclose or suggest generating the identifier itself. Therefore, the combination of Mahaney and Kawamura does not disclose or suggest every element of Appellant’s claim 1 and as such the 103 rejection should be reversed.

In addition, Kawamura has been added to Mahaney to apparently cure the deficiencies of Mahaney concerning the feature of generating a second identifier by said first station, the second identifier different from the identifier associated with the Access Point. However, the final Office Action does not provide any explanation or supporting evidence as to why one of ordinary skill in the art would believe that Kawamura’s data communication apparatus and method are related to the method for direct communication in an Access Point controlled network as claimed.

On page 6, the Office Action simply provides a conclusory statement of “as to reduce hoops and create a direct communication link between the first node and the node of interest,” to support the combination of references in making this rejection. Nowhere is there any suggestion

in either reference or with the knowledge of one ordinarily skilled in the art to support these conclusory statements.

KSR makes clear that rejections on obviousness cannot be sustained by mere conclusory statements; instead KSR requires that an Examiner provide “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness.” (KSR Opinion at p. 14). An Examiner must “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does,” (KSR Opinion at p. 15). And, the Examiner must make “explicit” this rationale of “the apparent reason to combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.” (KSR Opinion at p. 14). Anything less than such an explicit analysis may not be sufficient to support a prima facie case of obviousness.

Appellant respectfully submit that a person of ordinary skill in the art would not be prompted to combine Kawamura with Mahaney because Kawamura does not involve an Access Point and thus the network architectures of Mahaney and Kawamura are different. As such, Appellant respectfully submits that the Office Action has not presented a prima facie case of obviousness and the rejection should be withdrawn.

Furthermore, Kawamura does not cure the defect of Mahaney as noted above with respect to Appellant’s claim 1. For all the reasons set forth immediately above and for the reasons set forth with respect to the limitations in claim 1, it is submitted that claim 1 is not rendered obvious by the combination of Mahaney and Kawamura.

2. Claim 9

Claim 9 is an independent claim from which claims 10 and 11 depend. Claim 9 calls in part for “said first station generates a second identifier, the second identifier different from the identifier associated with the access point. . . .”

Claim 9 is directed to an access point controlled wireless network, whereas claim 1 is directed to a method. As such, claim 9 is different from claim 1. However, in the final Office Action, claim 9 is rejected using the same arguments as for claim 1. Appellant respectfully submits that claim 9 must be interpreted on its own merits.

However, in view of the Office Action using the same arguments as in claim 1, Appellant essentially repeats the argument from claim 1 above and applies them to the specific features and interpretation of claim 9 without any loss of generality or limitation. It is respectfully submitted that Mahaney and Kawamura, separately or in combination, do not disclose or even suggest all the features of claim 9. It is respectfully requested that the Board reverse this rejection of claim 9.

3. Claims 2-7 and 10-12

Each of claims 2-7 and 10-12 ultimately depend from an allowable parent claim. Furthermore, each dependent claim includes additional distinguishing features. For each dependent claim Appellant repeats the above arguments from claim 1 and applies them to each dependent claim. Thus, Appellant respectfully submits that dependent claims 2-7 and 10-12 are allowable at least by virtue of their dependency on an allowable parent claim and that the rejection under 35 U.S.C. 103(a) is unfounded and should be reversed.

B. Claim 8 is not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Mahany in view of Kawamura and further in view of Jaquet.

Claim 8

Claim 8 depends from allowable claim 1. Furthermore, claim 8 includes additional distinguishing features. Appellant repeats the above arguments from claim 1 and applies them to claim 8. Jaquet does not cure the deficiencies of Mahany and Kawamura as noted above with respect to claim 1. Thus, Appellant respectfully submits that claim 8 is allowable at least by virtue of its dependency on allowable claim 1 and that the rejection under 35 U.S.C. 103(a) is unfounded and should be reversed.

CONCLUSION

In light of the above, Appellant respectfully submits that the rejection of claims 1-12 are in error, legally and factually, and must be reversed.

Respectfully submitted,

By: /Hay Yeung Cheung/

Hay Yeung Cheung
Myers Wolin, LLC
Reg. No. 56,666

Please direct all correspondence to:

Corporate Counsel
U.S. PHILIPS CORPORATION
P.O. Box 3001
Briarcliff Manor, NY 10510-8001

VIII. CLAIMS APPENDIX

1. (Previously presented) A method for direct communication between a first station and a second station in an Access Point controlled wireless network, wherein a communication channel is ruled by an identifier associated with the Access Point, comprising:

generating a second identifier by said first station, the second identifier different from the identifier associated with the Access Point;

sending, by said first station to the second station, an invitation message for direct communication carrying said second identifier;

sending, by said second station, a response message acknowledging the invitation message; and

setting up direct communication between said first station and said second station using said second identifier, wherein the first station and the second station are different from the Access Point.

2. (Previously presented) The method according to claim 1, wherein said invitation message and said response message are sent via the Access Point using the identifier associated with the Access Point.

3. (Previously presented) The method according to claim 1, wherein said invitation message and said response message are exchanged directly between said first station and said second station using the second identifier different from the identifier associated with the Access Point.

4. (Original) The method according to claim 1, wherein said response message contains information that said second identifier is confirmed or that said second identifier is rejected and a third identifier is proposed, wherein said third identifier is different from the identifier associated with the Access Point.

5. (Previously presented) The method according to claim 12, wherein said response message contains information that said second channel is confirmed or that said second channel is rejected and the channel which is associated with the Access Point or a third channel is proposed.

6. (Original) The method according to claim 1, wherein said second identifier is a dedicated identifier for direct communication between stations.

7. (Previously presented) The method according to claim 1, wherein carrier sensing is applied to avoid collision on said communication channel ruled by an identifier associated with the Access Point.

8. (Previously presented) Use of the method according to claim 1 in the communication protocol of the IEEE 802.11 standard.

9. (Previously presented) An access point controlled wireless network, wherein a first communication channel is ruled by an identifier associated with the access point, said wireless network comprising:

at least a first station and a second station capable of establishing direct communication, wherein:

said first station generates a second identifier, the second identifier different from the identifier associated with the access point, and sends an invitation message for direct communication carrying said second identifier to the second station; said second station sends a response message acknowledging the invitation message; and said first station sets up direct communication with said second station using said second identifier, wherein the first station and the second station are different from the access point.

10. (Previously presented) The wireless network of claim 9, wherein the first station chooses the first communication channel or a second communication channel, different from the first communication channel, for direct communication with the second station, and when the second communication channel is chosen, the first station sends an indication of the second communication channel to the second station.

11. (Previously presented) The wireless network of claim 10, wherein, when the second station receives an indication of the second communication channel, the response message contains information that the second communication channel is confirmed or that the second communication channel is rejected and the first communication channel which is associated with the access point or a third communication channel is proposed.

12. (Previously presented) The method according to claim 1, wherein the first station chooses the first communication channel or a second communication channel, different from the first communication channel, for direct communication with the second station, and when the second communication channel is chosen, the first station sends an indication of the second communication channel to the second station.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title nor any other evidence entered by the examiner and relied upon by Appellant in the appeal.

X. RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any appeals or interferences related to the present application.